

Ex.5

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

JENNIFER ARTESI

VS

NO: 1:19-CV-00214-SM

DEMOULAS SUPER MARKETS, INC., d/b/a MARKET BASKET
and DENNIS LABATTE

DEPOSITION OF MANDY BARNUM

This deposition taken by agreement of counsel
at the New Hampshire Bar Association, 2 Pillsbury
Street, Concord, New Hampshire, on
February 24, 2020, commencing at 9:00 a.m.

1 on and did other positions, correct?

2 A Yes.

3 Q So when Jennifer went out again around
4 December 30 of 2016, for several weeks, who
5 filled in her -- who worked her hours?

6 A The same person.

7 Q So that person -- so you were able to cover
8 Jennifer's job duties adequately?

9 A Yes.

10 Q And in fact, it was the same amount of
11 wrapping able to be done because you had
12 basically a floater person?

13 A Yes.

14 Q And when Jennifer came back, was anyone else
15 hired in the department right before March of
16 2017 when she tried to come back to work?

17 A No.

18 Q Okay. So you had the same part-time people
19 that you had in the fall of 2016?

20 A Yes.

21 Q Who was that extra part-time person that had
22 been hired?

23 A I don't remember.

1 Q Was that person -- you are not there anymore?

2 A No.

3 Q Was that person there when you left?

4 A I don't remember.

5 Q Okay. But there is no hardship to your
6 department? You were able to stay
7 appropriately staffed?

8 A No, definitely not.

9 Q Definitely not what? It wasn't a hardship?

10 A We were hurting for help, if that is what you
11 mean, with her gone.

12 Q Okay. But you were able to fill in with a
13 part-time person?

14 A Right, but they don't do the same amount of
15 work as she could, with the knowledge that she
16 had.

17 Q Okay. So it would be good for her to get back
18 to work?

19 A Yes.

20 Q And even when she tried to come back to work,
21 it would have been good for you to have her
22 back, correct?

23 A Yes.

1 Q So when did you leave the Somersworth store --
2 she tried to come back in March of '17.

3 How much longer were you there?

4 A I don't remember.

5 Q So it is three years ago, approximately?

6 A Yes.

7 Q So working backwards, how long have you been
8 at your current store, Seabrook?

9 A I have been at Seabrook since Labor Day of
10 2018.

11 Q And that was your next store after
12 Somersworth?

13 A Yes.

14 Q So you would have been through '17 and most of
15 '18?

16 A Yes.

17 Q So approximately a year and three quarters?

18 A Yes, approximately.

19 Q During that year and three quarters -- well,
20 let's go to the first year.

21 From March of '17 for the rest of
22 that calendar year, did you hire -- did anyone
23 else get hired into produce to assist with

1 wrapping?

2 A Yes.

3 Q And when was that person hired?

4 A They actually transferred a full-time wrapper
5 to me once she was gone.

6 Q So would that have been April, May of '17?

7 A I don't remember which exact month.

8 Q It was definitely after she was terminated on
9 or about March 6 of '17?

10 A Yes.

11 Q Where did that person transfer?

12 MS. FEENEY: From?

13 Q From, thank you.

14 A She came from Plaistow.

15 Q Plaistow?

16 A Yes.

17 Q Had she had experience wrapping?

18 A Yes.

19 Q So do you know how they replaced her from the
20 store she came from?

21 A She got promoted to full-time coming to me.

22 Q So she was part-time before?

23 A Yes.

1 Q Is there any lower cut-off, like 32 and above
2 or 40 and above?

3 A It is 40.

4 Q Did you, when you worked in the Somersworth
5 store, how many people did you supervise,
6 approximately?

7 A Approximately, I want to say 20.

8 Q Now, is Market Basket open 24 hours a day?

9 A No.

10 Q What are your general store hours you are
11 open?

12 MS. FEENEY: Somersworth or
13 Seabrook?

14 Q Somersworth?

15 A Somersworth, they are open from 7 a.m. to 9
16 p.m. Monday through Saturday. Sunday 7 a.m.
17 to 7 p.m.

18 Q So in your opinion, if Ms. Artesi had been
19 allowed to come back in March of 2017, you
20 would have been happy to have her back?

21 A Yes.

22 Q Now, where did you think she was after
23 December 30, what had you heard about why she

1 A Yes.

2 Q But that doesn't, as far as you understand,
3 apply when people bring in medical notes and
4 have a medical reason for being out?

5 A Right.

6 Q Have you ever known anyone to have been on
7 FMLA leave that was terminated for not
8 returning soon enough?

9 A No.

10 Q Are you aware of people who have been out
11 longer than 12 weeks on FMLA -- strike that.

12 Have you been aware of people that
13 had FMLA leave that exceeded the 12 weeks that
14 came back and were not terminated?

15 A Yes.

16 Q Let me take a minute here, and look at my
17 notes. I don't think we need to take a break.

18 I am going to show you these time
19 cards.

20 MS. JOHNSON: Can you mark this as
21 2?

22 (Whereupon, the court reporter
23 marked Exhibit Number 2, Time cards, for